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BARNEY'S, INC.

9
10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA

12 COREY DAVIS, individually, and on
behalf of others similarly situated;

13 Plaintiff,

14 v.

15 BARNEY'S, INC. WHICH WILL DO
16 BUSINESS IN CALIFORNIA AS
17 BARNEYS NEW YORK, a New York
Corporation; and DOES 1-50,
18 Defendants.

Case No. 2:18-cv-06627-JFW-SK

DISCOVERY DOCUMENT:
REFERRED TO MAGISTRATE
JUDGE STEVE KIM

**STIPULATED PROTECTIVE
ORDER**

Complaint Filed: June 20, 2018
(Los Angeles Superior Court)
Trial Date: September 6, 2019

1. 1.

2 A. PURPOSES AND LIMITATIONS

3 Discovery in this action is likely to involve production of confidential,
4 proprietary, or private information for which special protection from public disclosure
5 and from use for any purpose other than prosecuting this litigation may be warranted.
6 Accordingly, the parties hereby stipulate to and petition the Court to enter the following
7 Stipulated Protective Order. The parties acknowledge that this Order does not confer
8 blanket protections on all disclosures or responses to discovery and that the protection
9 it affords from public disclosure and use extends only to the limited information or items
10 that are entitled to confidential treatment under the applicable legal principles. The
11 parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated
12 Protective Order does not entitle them to file confidential information under seal; Civil
13 Local Rule 79-5 sets forth the procedures that must be followed and the standards that
14 will be applied when a party seeks permission from the court to file material under seal.

15 B. GOOD CAUSE STATEMENT

16 This action is likely to involve trade secrets, private customer information,
17 private financial information and other valuable proprietary information for which
18 special protection from public disclosure and from use for any purpose other than
19 prosecution of this action is warranted. Such confidential and proprietary materials and
20 information consist of, among other things, confidential business or financial
21 information, information regarding confidential business practices, or other confidential
22 research, development, or commercial information (including information implicating
23 privacy rights of third parties), information otherwise generally unavailable to the
24 public, or which may be privileged or otherwise protected from disclosure under state
25 or federal statutes, court rules, case decisions, or common law. Accordingly, to expedite
26 the flow of information, to facilitate the prompt resolution of disputes over
27 confidentiality of discovery materials, to adequately protect information the parties are
28 entitled to keep confidential, to ensure that the parties are permitted reasonable

1 necessary uses of such material in preparation for and in the conduct of trial, to address
2 their handling at the end of the litigation, and serve the ends of justice, a protective order
3 for such information is justified in this matter. It is the intent of the parties that
4 information will not be designated as confidential for tactical reasons and that nothing
5 be so designated without a good faith belief that it has been maintained in a confidential,
6 non-public manner, and there is good cause why it should not be part of the public
7 record of this case.

8 2. DEFINITIONS

9 2.1 Action: this pending federal lawsuit, that was originally filed in the Los
10 Angeles Superior Court on June 20, 2018, Case Number BC 710733, and styled as
11 *Corey Davis, individually, and on behalf of others similarly situated v. Barney's, Inc.*
12 *which will do business in California as Barneys New York, a New York Corporation;*
13 *and DOES 1-50* that is now venued in the United States District Court, Central District
14 of California, Case No. 2:18-cv-06627-JFW-SK.

15 2.2 Challenging Party: a Party or Non-Party that challenges the designation of
16 information or items under this Order.

17 2.3 "CONFIDENTIAL" Information or Items: information (regardless of how
18 it is generated, stored or maintained) or tangible things that qualify for protection under
19 Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause
20 Statement.

21 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their
22 support staff).

23 2.5 Designating Party: a Party or Non-Party that designates information or
24 items that it produces in disclosures or in responses to discovery as
25 "CONFIDENTIAL."

26 2.6 Disclosure or Discovery Material: all items or information, regardless of
27 the medium or manner in which it is generated, stored, or maintained (including, among
28 other things, testimony, transcripts, and tangible things), that are produced or generated

1 in disclosures or responses to discovery in this matter.

2 2.7 Expert: a person with specialized knowledge or experience in a matter
3 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
4 expert witness or as a consultant in this Action.

5 2.8 House Counsel: attorneys who are employees of a party to this Action.
6 House Counsel does not include Outside Counsel of Record or any other outside
7 counsel.

8 2.9 Non-Party: any natural person, partnership, corporation, association, or
9 other legal entity not named as a Party to this action.

10 2.10 Outside Counsel of Record: attorneys who are not employees of a party to
11 this Action but are retained to represent or advise a party to this Action and have
12 appeared in this Action on behalf of that party or are affiliated with a law firm which
13 has appeared on behalf of that party, and includes support staff.

14 2.11 Party: any party to this Action, including all of its officers, directors,
15 employees, consultants, retained experts, and Outside Counsel of Record (and their
16 support staffs).

17 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
18 Discovery Material in this Action.

19 2.13 Professional Vendors: persons or entities that provide litigation support
20 services (e.g., photocopying, videotaping, translating, preparing exhibits or
21 demonstrations, and organizing, storing, or retrieving data in any form or medium) and
22 their employees and subcontractors.

23 2.14 Protected Material: any Disclosure or Discovery Material that is
24 designated as "CONFIDENTIAL."

25 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
26 from a Producing Party.

27 3. SCOPE

28 The protections conferred by this Stipulation and Order cover not only Protected

1 Material (as defined above), but also (1) any information copied or extracted from
2 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected
3 Material; and (3) any testimony, conversations, or presentations by Parties or their
4 Counsel that might reveal Protected Material.

5 Any use of Protected Material at trial shall be governed by the orders of the trial
6 judge. This Order does not govern the use of Protected Material at trial.

7 4. DURATION

8 Even after final disposition of this litigation, the confidentiality obligations
9 imposed by this Order shall remain in effect until a Designating Party agrees otherwise
10 in writing or a court order otherwise directs. Final disposition shall be deemed to be the
11 later of (1) dismissal of all claims and defenses in this Action, with or without prejudice;
12 and (2) final judgment herein after the completion and exhaustion of all appeals,
13 rehearings, remands, trials, or reviews of this Action, including the time limits for filing
14 any motions or applications for extension of time pursuant to applicable law.

15 5. DESIGNATING PROTECTED MATERIAL

16 5.1 Exercise of Restraint and Care in Designating Material for Protection.

17 Each Party or Non-Party that designates information or items for protection under this
18 Order must take care to limit any such designation to specific material that qualifies
19 under the appropriate standards. The Designating Party must designate for protection
20 only those parts of material, documents, items, or oral or written communications that
21 qualify so that other portions of the material, documents, items, or communications for
22 which protection is not warranted are not swept unjustifiably within the ambit of this
23 Order.

24 Mass, indiscriminate, or routinized designations are prohibited. Designations that
25 are shown to be clearly unjustified or that have been made for an improper purpose
26 (e.g., to unnecessarily encumber the case development process or to impose
27 unnecessary expenses and burdens on other parties) may expose the Designating Party
28 to sanctions.

1 If it comes to a Designating Party's attention that information or items that it
2 designated for protection do not qualify for protection, that Designating Party must
3 promptly notify all other Parties that it is withdrawing the inapplicable designation.

4 5.2 Manner and Timing of Designations. Except as otherwise provided in this
5 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated
6 or ordered, Disclosure or Discovery Material that qualifies for protection under this
7 Order must be clearly so designated before the material is disclosed or produced.

8 Designation in conformity with this Order requires:

9 (a) for information in documentary form (e.g., paper or electronic documents,
10 but excluding transcripts of depositions or other pretrial or trial proceedings), that the
11 Producing Party affix at a minimum, the legend "CONFIDENTIAL" (hereinafter
12 "CONFIDENTIAL legend"), to each page that contains protected material. If only a
13 portion or portions of the material on a page qualifies for protection, the Producing Party
14 also must clearly identify the protected portion(s) (e.g., by making appropriate markings
15 in the margins).

16 A Party or Non-Party that makes original documents available for inspection
17 need not designate them for protection until after the inspecting Party has indicated
18 which documents it would like copied and produced. During the inspection and before
19 the designation, all of the material made available for inspection shall be deemed
20 "CONFIDENTIAL." After the inspecting Party has identified the documents it wants
21 copied and produced, the Producing Party must determine which documents, or portions
22 thereof, qualify for protection under this Order. Then, before producing the specified
23 documents, the Producing Party must affix the "CONFIDENTIAL" legend to each page
24 that contains Protected Material. If only a portion or portions of the material on a page
25 qualifies for protection, the Producing Party also must clearly identify the protected
26 portion(s) (e.g., by making appropriate markings in the margins).

27 (b) for testimony given in depositions that the Designating Party identify the
28 Disclosure or Discovery Material on the record, before the close of the deposition, all

1 protected testimony.

2 (c) for information produced in some form other than documentary and for
3 any other tangible items, that the Producing Party affix in a prominent place on the
4 exterior of the container or containers in which the information is stored the legend
5 “CONFIDENTIAL.” If only a portion or portions of the information warrants
6 protection, the Producing Party, to the extent practicable, shall identify the protected
7 portion(s).

8 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
9 failure to designate qualified information or items does not, standing alone, waive the
10 Designating Party’s right to secure protection under this Order for such material. Upon
11 timely correction of a designation, the Receiving Party must make reasonable efforts to
12 assure that the material is treated in accordance with the provisions of this Order.

13 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

14 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
15 designation of confidentiality at any time that is consistent with the Court’s Scheduling
16 Order.

17 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
18 resolution process under Local Rule 37-1 et seq.

19 6.3 The burden of persuasion in any such challenge proceeding shall be on the
20 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g.,
21 to harass or impose unnecessary expenses and burdens on other parties) may expose the
22 Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn
23 the confidentiality designation, all parties shall continue to afford the material in
24 question the level of protection to which it is entitled under the Producing Party’s
25 designation until the Court rules on the challenge.

26 7. ACCESS TO AND USE OF PROTECTED MATERIAL

27 7.1 Basic Principles. A Receiving Party may use Protected Material that is
28 disclosed or produced by another Party or by a Non-Party in connection with this Action

1 only for prosecuting, defending, or attempting to settle this Action. Such Protected
2 Material may be disclosed only to the categories of persons and under the conditions
3 described in this Order. When the Action has been terminated, a Receiving Party must
4 comply with the provisions of section 13 below (FINAL DISPOSITION).

5 Protected Material must be stored and maintained by a Receiving Party at a
6 location and in a secure manner that ensures that access is limited to the persons
7 authorized under this Order.

8 7.2. Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
9 ordered by the court or permitted in writing by the Designating Party, a Receiving Party
10 may disclose any information or item designated “CONFIDENTIAL” only to:

11 (a) the Receiving Party’s Outside Counsel of Record in this Action, as well as
12 employees of said Outside Counsel of Record to whom it is reasonably necessary to
13 disclose the information for this Action;

14 (b) the parties themselves, and, if applicable, the officers, directors, and
15 employees (including House Counsel) of the Receiving Party to whom disclosure is
16 reasonably necessary for this Action;

17 (c) Experts (as defined in this Order) of the Receiving Party to whom
18 disclosure is reasonably necessary for this Action and who have signed the
19 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

20 (d) the court and its personnel;

21 (e) court reporters and their staff;

22 (f) professional jury or trial consultants, mock jurors, and Professional
23 Vendors to whom disclosure is reasonably necessary for this Action and who have
24 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

25 (g) the author or recipient of a document containing the information or a
26 custodian or other person who otherwise possessed or knew the information;

27 (h) during their depositions, witnesses ,and attorneys for witnesses, in the
28 Action to whom disclosure is reasonably necessary provided: (1) the deposing party

1 requests that the witness sign the form attached as Exhibit 1 hereto; and (2) they will
2 not be permitted to keep any confidential information unless they sign the
3 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed
4 by the Designating Party or ordered by the court. Pages of transcribed deposition
5 testimony or exhibits to depositions that reveal Protected Material may be separately
6 bound by the court reporter and may not be disclosed to anyone except as permitted
7 under this Stipulated Protective Order; and

8 (i) any mediator or settlement officer, and their supporting personnel,
9 mutually agreed upon by any of the parties engaged in settlement discussions.
10

11 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
12 OTHER LITIGATION

13 If a Party is served with a subpoena or a court order issued in other litigation that
14 compels disclosure of any information or items designated in this Action as
15 “CONFIDENTIAL,” that Party must:

16 (a) promptly notify in writing the Designating Party. Such notification shall
17 include a copy of the subpoena or court order;

18 (b) promptly notify in writing the party who caused the subpoena or order to
19 issue in the other litigation that some or all of the material covered by the subpoena or
20 order is subject to this Protective Order. Such notification shall include a copy of this
21 Stipulated Protective Order; and

22 (c) cooperate with respect to all reasonable procedures sought to be pursued
23 by the Designating Party whose Protected Material may be affected.

24 If the Designating Party timely seeks a protective order, the Party served with the
25 subpoena or court order shall not produce any information designated in this action as
26 “CONFIDENTIAL” before a determination by the court from which the subpoena or
27 order issued, unless the Party has obtained the Designating Party’s permission. The
28 Designating Party shall bear the burden and expense of seeking protection in that court

1 of its confidential material and nothing in these provisions should be construed as
2 authorizing or encouraging a Receiving Party in this Action to disobey a lawful directive
3 from another court.

4 9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED
5 IN THIS LITIGATION

6 (a) The terms of this Order are applicable to information produced by a Non-
7 Party in this Action and designated as "CONFIDENTIAL." Such information produced
8 by Non-Parties in connection with this litigation is protected by the remedies and relief
9 provided by this Order. Nothing in these provisions should be construed as prohibiting
10 a Non-Party from seeking additional protections.

11 (b) In the event that a Party is required, by a valid discovery request, to
12 produce a Non-Party's confidential information in its possession, and the Party is
13 subject to an agreement with the Non-Party not to produce the Non-Party's confidential
14 information, then the Party shall:

15 (1) promptly notify in writing the Requesting Party and the Non-Party that
16 some or all of the information requested is subject to a confidentiality agreement with
17 a Non-Party;

18 (2) promptly provide the Non-Party with a copy of the Stipulated
19 Protective Order in this Action, the relevant discovery request(s), and a reasonably
20 specific description of the information requested; and

21 (3) make the information requested available for inspection by the Non-
22 Party, if requested.

23 (c) If the Non-Party fails to seek a protective order from this court within 14
24 days of receiving the notice and accompanying information, the Receiving Party may
25 produce the Non-Party's confidential information responsive to the discovery request.
26 If the Non-Party timely seeks a protective order, the Receiving Party shall not produce
27 any information in its possession or control that is subject to the confidentiality
28 agreement with the Non-Party before a determination by the court.

Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the parties may incorporate their agreement in the stipulated protective order submitted to the court.

12. MISCELLANEOUS

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

1 12.2 Right to Assert Other Objections. By stipulating to the entry of this
2 Protective Order no Party waives any right it otherwise would have to object to
3 disclosing or producing any information or item on any ground not addressed in this
4 Stipulated Protective Order. Similarly, no Party waives any right to object on any
5 ground to use in evidence of any of the material covered by this Protective Order.

6 12.3 Filing Protected Material. A Party that seeks to file under seal any Protected
7 Material must comply with Civil Local Rule 79-5. Protected Material may only be filed
8 under seal pursuant to a court order authorizing the sealing of the specific Protected
9 Material at issue. If a Party's request to file Protected Material under seal is denied by
10 the court, then the Receiving Party may file the information in the public record unless
11 otherwise instructed by the court.

12
13 13. FINAL DISPOSITION

14 After the final disposition of this Action, as defined in paragraph 4, within 60
15 days of a written request by the Designating Party, each Receiving Party must return all
16 Protected Material to the Producing Party or destroy such material. As used in this
17 subdivision, "all Protected Material" includes all copies, abstracts, compilations,
18 summaries, and any other format reproducing or capturing any of the Protected
19 Material. Whether the Protected Material is returned or destroyed, the Receiving Party
20 must submit a written certification to the Producing Party (and, if not the same person
21 or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by
22 category, where appropriate) all the Protected Material that was returned or destroyed
23 and (2) affirms that the Receiving Party has not retained any copies, abstracts,
24 compilations, summaries or any other format reproducing or capturing any of the
25 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an
26 archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
27 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney
28 work product, and consultant and expert work product, even if such materials contain

1 Protected Material. Any such archival copies that contain or constitute Protected
2 Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

3
4 14. Any violation of this Order may be punished by any and all appropriate
5 measures including, without limitation, contempt proceedings and/or monetary
6 sanctions.

7 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD:

8
9 DATED September 11, 2018

10 /s/ Heather Davis
11 Attorneys for Plaintiff

12
13 DATED: September 11, 2018

14 /s/ Miranda A. Mossavar
15 Attorneys for Defendant

16
17 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

18 DATED: September 13, 2018

19
20 

21 _____
22 Honorable Steve Kim
23 United States Magistrate Judge
24
25
26
27
28

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3
4 I, _____ [print or type full name], of
5 _____ [print or type full address], declare under penalty of perjury that I
6 have read in its entirety and understand the Stipulated Protective Order that was issued
7 by the United States District Court for the Central District of California on _____
8 [date] in the case of *Corey Davis v. Barney's Inc., et al.* Case No. 2:18-cv-06627-JFW
9 (SK). I agree to comply with and to be bound by all the terms of this Stipulated
10 Protective Order and I understand and acknowledge that failure to so comply could
11 expose me to sanctions and punishment in the nature of contempt. I solemnly promise
12 that I will not disclose in any manner any information or item that is subject to this
13 Stipulated Protective Order to any person or entity except in strict compliance with the
14 provisions of this Order.

15 I further agree to submit to the jurisdiction of the United States District Court for
16 the Central District of California for the purpose of enforcing the terms of this Stipulated
17 Protective Order, even if such enforcement proceedings occur after termination of this
18 action. I hereby appoint _____ [print or type full name] of
19 _____ [print or type full address and
20 telephone number] as my California agent for service of process in connection with this
21 action or any proceedings related to enforcement of this Stipulated Protective Order.

22 Date: _____

23 City and State where sworn and signed: _____

24 Printed name: _____

25 Signature: _____
26
27
28